

REMARKS

This is intended to be a complete response to the Official Action mailed September 30, 2004, in which claims 1-5 were rejected. Applicant respectfully traverses the rejection.

Rejection Under 35 U.S.C. §103(a)

Claims 1-5 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Kunststoff (BE 654,427) in view of Applicant's IDS Statement (Section-3. *Statements as to Information Not Found in Patents of Publications*), and De Klerk (US 5,228,234).

Applicant respectfully traverses the basis for the rejection. The claims are directed to use of a sleeve having a continuous seal from top to bottom, a closed lower end, a frusto-conical shape and a decorative skirt portion having a plurality of curved portions.

In the rejection it is stated:

"Kunststoff is silent as to a closed lower end and a plurality of curved portions in the upper end."

"Kunststoff as modified still lacks a plurality of curved portions as cited in the instant claim."

"De Klerk '234 is relied upon for the obviousness of a plurality of curved portions in the sleeve upper end (Figure -3), as cited in the instant claim."

"It would have been obvious therefore, to one of ordinary skill in the art at the time the invention was made, to have further

modified the sleeve of Kunststoff to have a plurality of curved portions in the sleeve upper end, as cited in the instant claim and as taught by De Klerk, for the known aesthetic advantages of that feature.”

In the rejection it is further stated:

“Kunststoff discloses fusing polypropylene trapezoidal cuttings in the first paragraph of the translation on page-2 (read as: “continuously sealed from the upper end to the closed lower end:, as cited),..)”

The first paragraph of page 2 of the English translation of Kunststoff has been reviewed and it appears the Examiner is incorrect that the paragraph states that the sleeve is “continuously sealed from the upper end to the closed lower end.”

Indeed, there is no mention of a “closed lower end” in paragraph 1, page 2 of the translation nor anywhere else in the translation.

In the rejection it is further stated that:

“Kunststoff '427 depicts a preformed flexible sleeve having open upper and lower ends, a frusto-conical shape, and a skirt portion (generally the sleeve portion above the disposed pot).”

Kunststoff teaches that a “sleeve 3” is placed about a pot to cover the pot, and that a separate “covering 6” is pulled up and over the pot and sleeve 3 to cover the plant in the pot. A small portion of the sleeve 3 appears to extend slightly above the upper rim of the pot while the covering 6 extends well above an upper end of the plant.

Kunststoff does teach that the sleeve 3 may be decorated or colored or both to obscure the view of the pot or the sleeve may be decorated at its upper edge.

In summary, as noted by the Examiner, Kunststoff fails to teach a closed lower end or a plurality of curved portions in the upper end of sleeve.

In the rejection it is stated that Applicant's prior art admission provides a teaching that the lower end of the sleeve of Kunststoff could be closed and that De Klerk provides the teaching of a plurality of curved portions in the upper end of the sleeve.

Applicant traverses Examiner's assertion that one of ordinary skill in the art would be motivated to alter the Kunststoff sleeve in the manner suggested above by the Examiner.

First, it would not be obvious to close the bottom of the sleeve of Kunststoff. The bottom end of the sleeve of Kunststoff would not be closed because if it was, the preferred method of use of the sleeve would become impossible. Proof of this is evident in the final paragraph of the Kunststoff translation, page 4 which states:

"A certain number of coverings 6 and sleeves 3 are placed on a sales stand such that the coverings and the sleeves assume the shape of a truncated cone and that, viewed from the outside to the inside, a sleeve follows a covering. From the center of the stand, passing through the coverings and the sleeves, rises a bar supporting a base on which the flower pot 1 is placed. To wrap this flower pot and the plant it contains, the covering 6 located under

it on the sales stand is pulled upward, which covering pulls along with it the sleeve 3 which it contains.”

Though the “sales stand,” “bar,” and “base” are not shown in the Kunststoff reference, an example of such a device is shown in Figures 1 and 2 of U.S. Patent No. 4,621,733, Figures 1 and 2 of which are attached hereto as Attachment 1. It is clear that the sleeves used with such a “sales stand” must of necessity have an open lower end. If the lower end of the sleeve is not open it is simply impossible for it to fit over the “bar” and to be able to be pulled over the “base” so as to be placed about the pot. The lower end of the sleeve must be open, contrary to the Examiner’s assertion that it would have been obvious to modify Kunststoff’s sleeve to have a closed bottom.

A closed bottom in Kunststoff’s sleeve is therefore not *prima facie* obvious.

Second, it would not be obvious to modify the upper end of the sleeve 3 of Kunststoff to have a plurality of curved portions.

The basic function of the sleeve 3 of Kunststoff is to “hide from view the outer surface of the flower pot” (No. 4 of the Summary) and to “cover the ugly appearance of [the outer] surface” [of the pot] (see page 5, first paragraph of the Kunststoff translation). Adding a plurality of curved portions to the upper end of the sleeve 3 of Kunststoff would do nothing further to cover the “ugly appearance” of the pot. The sleeve with a straight upper edge already does that.

The purpose of the decorative skirt with curved portions in the present invention is to direct the eyes of the viewer of the potted plant upwardly toward the blooms and foliage of the plant in the pot. The purpose of the skirt is not to hide the pot, that function is performed already by the decorative lower portion.

Moreover, De Klerk '234, while teaching a sleeve with a curved upper end, does not teach a sleeve which places the curved portion near the lower portion of the stem portion of the plant as claimed presently. The curved upper edge of the De Klerk reference would be positioned near or over the top of or over any floral grouping placed therein, not near the lower end.

Therefore, in view of the absence of a motivation to add curved portions to the upper end of the Kunststoff sleeve, and absence of a teaching by De Klerk to place curved portions on a sleeve to be near the lower portion of the stems, and for the other reasons provided above, modification of the Kunststoff sleeve to have curved portions is not *prima facie* obvious.

In view of the above, Applicant respectfully requests reconsideration and withdrawal of the rejection under 35 U.S.C. §103(a).

Secondary References

The secondary references cited by the Examiner have been reviewed. None of the references teaches the invention as claimed herein.

Conclusion

This was meant to be a complete response to the Office Action mailed September 30, 2004.

In view of the above, Applicant respectfully submits the claims are now in a condition for allowance and request issuance of a Notice of Allowance thereof.

Should the Examiner have any questions regarding this Amendment, or the Remarks contained therein, Applicant's representative would welcome the opportunity to discuss same with the Examiner.

Respectfully submitted,



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